



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

<u>PORTSMOUTH CITY EMPLOYEES, LOCAL 1386</u>	:	
AMERICAN FEDERATION OF STATE,	:	
COUNTY & MUNICIPAL EMPLOYEES, AFL-CIO	:	
	:	
Petitioner	:	CASE NO. A-0411:7
v.	:	
	:	
CITY OF PORTSMOUTH, N.H.	:	DECISION NO. 83-37
	:	
Respondent	:	

APPEARANCES

Representing Portsmouth City Employees

Edward Edwards, AFSCME

Representing City of Portsmouth

Calvin A. Canney, City Manager

Also in Attendance

Bill Scott

A. Feathers

Charles A. LeBlanc

Kate Giordano

Leslie MacPherson

Laurie Douglas

Roberta Lewis

BACKGROUND

AFSCME, Local 1386 petitioned the Public Employee Labor Relations Board (Board) for modification of their bargaining unit to include part-time employees of the Portsmouth Library who are employed on a permanent basis.

The city objects since they have no category of "permanent" part-time employees. At hearing on July 15, 1983 AFSCME presented testimony that negotiations had failed to provide inclusion of these positions into the bargaining unit and therefore they petitioned the PELRB. AFSCME also presented witnesses to demonstrate the intent of the employees, the community of interest, and the facts that these employees function within the same organizational unit as other members of the bargaining unit and the permanency of the positions.

The city in support of its opposition to the petition cited Town of Conway vs. N.H. Public Employee Labor Relations Board, 121, N.H. 372, 373, 430 A.2d 154 (1981) Public Employee Labor Relations Board 80-372. The town argues that the definition of temporary employee can only be defined narrowly by the Board; and further, the town argues these employees are temporary in that they work irregular hours.

The Board also takes official notice that Local 1386 was established prior

to the implementation of RSA 273-A (Supp. 1975) and consequently grandfathered under "effects on existing units, certifications and agreements".

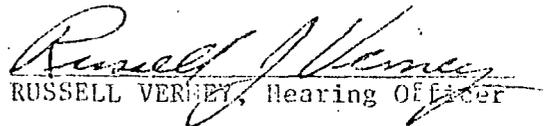
FINDINGS OF FACT

The grandfather clause of RSA 273-A (Chapter 490 Laws of 1975) provided a bar against the Board acting to modify existing bargaining units until August 23, 1978. This bar was defined by the N.H. Supreme Court in State Employees Association of New Hampshire, Inc. vs. N.H. Public Employee Labor Relations Board (PELRB 7540) 116, N.H. 653, 366, A.2d, 494 (1976). In its decision the court defined the grandfather clause as "allowing bargaining units in existence on the effective date of this chapter also to continue unmodified until valid petitions are filed as provided for in the statute", RSA 273-A:10 (Supp. 1975). AFSCME Local 1386 has complied with the requirement of filing a petition in accordance with Board Rule Pub. 302.05. Town of Conway vs. N.H. Public Employee Labor Relations Board (supra) requires the application of plain language definitions unless a specific definition is provided by statute. RSA 273-A:1 IX (d) excludes persons in probationary or temporary status from the definition of public employee. Temporary is further restricted in definition not to consider the source of funding as cause for determining temporary status. Temporary is defined as "lasting, used or enjoyed for a limited time", (American Heritage Dictionary, Wm. Morris, editor, Delta Printing Company, July 1977).

Testimony indicated that the Portsmouth Library employees regularly work specific minimum hours each week, fifty two weeks each year and have done so for up to thirteen years. This employment condition cannot be found to be "temporary" or "irregular". In Nashua Teachers' Union, Local 1044, AFT/AFL-CIO vs. Nashua School Department PELRB Decision No. 780036, part-time for exclusion into a bargaining unit is defined as 50 percent of the normal work week. The normal work week in this instance is thirty seven and one half hours. Therefore, employees regularly scheduled to work eighteen and one quarter or more hours per week are not prohibited from being included in the bargaining unit.

DECISION

AFSCME Local 1386 petition for modification is hereby granted. Local 1386's bargaining unit shall include all Portsmouth Library positions which now work a regular minimum of eighteen and one quarter hours per week and any future library positions which are upgraded in workweek hours to reach the minimum of eighteen and one quarter hours per week.


RUSSELL VERNEY, Hearing Officer

Signed this 11th day of August 1983.